UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,683	07/19/2005	Kouji Miura	2005_1138A	9315

52349 7590 03/11/2010		EXAMINER
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ART UNIT	PAPER NUMBER
3685	

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NOTIFICATION DATE	DELIVERY MODE
03/11/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ddalecki@wenderoth.com
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| **Advisory Action**
Before the Filing of an Appeal Brief | Application No.
10/542,683 | Applicant(s)
MIURA ET AL. | |
| | Examiner
Mohammad A. Nilforoush | Art Unit
3685 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 2/12/2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

  a) ☒ The period for reply expires _3_ months from the mailing date of the final rejection.

  b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

  (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

  (b) ☐ They raise the issue of new matter (see NOTE below);

  (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

  (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

  The status of the claim(s) is (or will be) as follows:

  Claim(s) allowed: _____.

  Claim(s) objected to: _____.

  Claim(s) rejected: _____.

  Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Calvin L Hewitt II/
Supervisory Patent Examiner, Art Unit 3685

/M. A. N./
Examiner, Art Unit 3685

Continuation of 11. does NOT place the application in condition for allowance because:

It is the Applicant's position that the combination of Hurvig and Bortvedt fails to disclose sending, in a second or a following transaction process, other than a first transaction process, out of the successive transaction processes, a request message, including a transaction flag generated by an inverting unit, without sending a commit message, as recited in claim 61. Examiner respectfully disagrees. Hurvig discloses sending the next request message when a response for one of the previously sent request messages is received (Hurvig 3:7-18; 10:15-23, 38-45; 11:6-32), Bortvedt additionally disclsoes including a transaction flag in a message (Bortvedt 15:5-23; 15:66-16:8).

Applicant further states that "...the closure message 125 of Bortvedt cannot be equated to the request message as recited in claim 61, because Bortvedt fails to disclose or suggest that the request message includes the transaction flag, such that the request message including the transaction flag is sent instead of sending the commit message, as recited in claim 61." However, Bortvedt discloses that an interval message includes flags indicating whether the message includes any transactions to commit (Bortvedt 15:5-13). Bortvedt further discloses that interval messages are generated at the beginning of every interval, about every one-hundred milliseconds (Bortvedt 8:46-59).

Regarding the rejection of claims 62, 64 and 73 under 35 USC §102(b), as the claims do not positively recite that the program is executed to cause the terminal to perform certain functions, such as those of the claimed sending unit, the program recited in the claims is only stored on the medium an is thus nonfunctional descriptive material. Nonfunctional descriptive material does not serve to differentiate the claims from the prior art. It has been held that where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability .... [T]he critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate (In re Gulack, 217 USPQ 401 (Fed. Cir. 1983), In re Ngai, 70 USPQ2d (Fed. Cir. 2004), In re Lowry, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II).

Additionally, regarding the rejection of claim 70 under 35 USC §112, second paragraph for omitting a step of processing successive transaction processes, Examiner notes that this renders the claim indefinite as the steps of "sending a plurality of messages..." and "receiving a plurality of response messages..." are conditioned on the successive transaction processes.